

THE TASK OF SOCIAL DEFENCE AND CRIMINAL POLICY

by

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The new project of programme of the International Society of Social Defence has a great importance not only for the Society itself, but it will also have a positive influence on the development of the criminal policy all over the world. It will probably decide the attitude concerning fight against crime for several decades to come and it will also determine conception and the direction of the activity to be taken as regards this fight. The Secretary General of the Society, Mr. Beria, has rightly said in June 1983 in Milan during the congress of the "four great" criminal societies that an era of the relationship of social defence and criminal justice has come to an end and a new one has started.

In the past three decades social defence considered its primary task to form a humanized criminal justice in its fight against crime, and in this field it produced significant result. Social changes and the development of criminal sciences, especially of criminology, prove more and more that the main means of the fight against crime must not be the criminal justice, but the reduction of social situations and constellations which result the crimes. There are many facts proving that parallelly with a better, a more complete and more humanized criminal justice, crime can and does increase.

Social changes, however, do not only bring about the increase of crime, but they also create crimes which become more dangerous as well.

Besides traditional crime the increase of violent crime and of child- and juvenile delinquency, the appearance and the increase of such new forms of crime as explosions, kidnappings, illegal traffic of drugs and arms, white-collar crime, pollution, violation of human rights — all these factors threaten and endanger the possibility of peaceful human life. Furthermore, this phenomenon is characteristic not only of most of the capitalist countries, but a few of them also of certain socialist countries, such as of Hungary. This is a challenge for mankind, for governments and for criminal experts; it stimulates us to protect more intensively society against the increase of crime; to prevent persons from committing crime, to prevent the offenders from becoming habitual enemies of the society. That

means, we must find more effective guiding principles for the fight against crime, for the prevention of it, which are more suitable to social demands.

The basic value of this project programme of social defence is the fact it has formulated its thesis in accordance with social development, with the help of criminal and other social sciences, as it had been done at the beginning of this movement. The value of these thesis is more expressed by the present circumstances in which the neo-classicist tendencies and endeavours are widely to be found among criminal experts.

The formulated thesis in the project programme concerning their content, are very near to those views which are accepted and emphasizes by us in Hungary in the past two decades as the views of socialist criminology and the way of thinking in it. We have come to these views in two ways: on the one hand, with deductive method concerning the acceptance of the universal regularity of causality and of the principle of materialistic determination; and on the other hand, with inductive method on the basis of our empirical research. If we accept that crime is the result of objective and subjective cause — just as any other human behaviour — then it is evident that in order to abolish or to decrease them we must change those relations, those life-conditions which created and create the opportunity for crime. On the basis of this thesis the importance of the fight against crime is attached to the prevention, to the change of social relations.

I am very happy to see that the basic thesis of socialist criminology meet on various points with the programme of social defence, because this proves that the expert of countries with different political system can share the same views even in the field of social sciences, and in the problems of criminology and so every one of us can fight in his own field for better human relations which have less conflicts and struggles.

By the acceptance of the universal validity of the causal regularity it becomes evident that it is the preventive measures which must be placed in the centre of the struggles concerning the decrease of crime. On the other hand, the precondition of effective prevention is the knowledge of the cause and conditions of crime, the recognition of the significance of cause research. The cause of crime cannot be revealed once and for all. A significant percentage of the causes changes along with the society. Social changes produce newer and newer contradictions, injustice; newer and newer types of situations and constellations of crime and these manifest themselves in newer and newer forms of crime. Without the knowledge of these concrete forms of changes we can hardly work out effective preventive measures. Thus, the permanent, continuous cause research is indispensable for the proper criminal policy, and in this way it claims a more significant place in the proper formation of social policy. If we accept this logical deduction then it seems to be justified that there should be *in the new programme (III/2 paragraph) a reference to the importance of cause research and as a consequences of this, to the possibility of increasing the effectiveness of prevention.*

I completely agree with the application of the critical point of view put down in the II/a paragraph of the programme, and, if necessary, with a standpoint which is against present conditions.

We cannot keep silent, for instance about the increase of crime, and the deterioration of public security. How far can we tolerate the growth of crime, the deterioration of public security, the strengthening of fear of crime? *The Human rights and the conditions to them must be quarenteed not only in the freedom of speech but also in right to a good public security and without any fear of crime.* Social defence as an organisation must fight for and insist on the right to the safety of life conditions, to public security and it must keep awake the conscience of the society. Although on the present level of the development of our society it cannot be expected from governments, of form the leaders of different countries that they get rid of crime, or that they put it in a plan as a future goal but *it is a real demand that they lessen crime from the present high level to a lower one.* For a society to be humane, to achieve a proper quality of life, to promote democratic human relations and decisions there is a need for a real public security and tendency of low level of crime. *The level, the structure and the tendency of crime is the indicator of the society in the long run.*

I think that the International Society of Social Defence must demand a deeper study of the relationship between the social conditions and crime and Social Defence movement must support it according to its possibilities. We must also demand for possibilities for the realisation of the views of criminal policy in every sphere of social life.

The Hungarian government will put the problems of crime prevention on its agenda in the near future and it also intends to compose the basic principles and the main task of crime prevention in a so called Crime Prevention Act. The Criminological Department of our University has led a widespread research in the preparation of the Act.

Our research prove that in the correlation of social conditions and crime *above a certain level of the fulfilment of needs it is not so much the quantity of the produced goods which dominate, but rather the just or unjust system of distribution.* In Hungary the life conditions have reached this level, and this is more so in developed capitalist countries. From this results that a significant number of crime experts are convinced that *fight against social injustice is a very important field of crime prevention,* and the present increase of crime in our country is in correlation with the increase of social injustice.

Another very important group of causes which helps the increase of crime in our country, is the incorrect formation of conscience, the incorrect, and unsocial view of people. For instance, we have already learned that at the beginning of our social development we have painted the developing and realised socialism in a more beautiful and riche colour than it seems to be on reality. Thus, we have increased the demands in such a way that they exceed our possibilities, especially it is sensible nowadays among the difficult economic relations, when real wages decrease significantly as compared to previous increase. Among the insufficiency of the

formation of conscience we find the slackening of family and school education, and those unfavourable condition of education and formation of conscience which can be found in certain places of employment. The egoistic view, the hunt after material interest, the search for possibilities to get money without work or money which is not in proportion with the work done have appeared again in our country as well.

As a marxist criminologist, I am convinced that the conscience of people are determined by their condition of life, their circumstances and therefore conscience lastly depends on the objective relations. But I must also emphasize that the conscience and the personality have a relative independence against actual objective, that means, the situational effects. Our present conscience and personality is such as it had been formed by the relations of our past (social, biological and other natural relations). In compliance with this, our conscience can select among the effects of present external relations. Since conscience is dependent on knowledge, and learning to a great extent, *besides the favourable formation of objective relations, the education plays also a significant role in the prevention of crime as a forming factor of conscience.* This is why we make increased efforts in trying to render education more proper, effective in the family, at the school and at the places of employment.

In case if we search for *new guiding principles for fight against crime*, for crime prevention, I propose that we take into account a more increased *fight against social injustice, more precisely, against social injustice which is apparent mostly in the relations of distribution of goods.* I also propose to include in the new guiding principles the elaboration and the application of those educational methods with the help of which we can value the social relations, and the relations of individuals and social interests on a more realistic level. The categorical interdiction of old morals, such as "do not kill", "do not steal", "do not cheat" are ineffective in such a world where millions fall victims of violence, where millions, and among them even leaders, kill, steal and cheat. *It is only the increasing harmony of individual and social interests, the decrease of the clash of interests, conflicts which can ensure the opportunity for an effective prevention of crime.*

The fact that we stress the necessity of expanding crime prevention into the various spheres of social life which fall outside the criminal justice does not mean that we do not see the importance of the perfection of *criminal justice and the more effective treatment of offenders.*

According to determinist conception the criminal human behaviour will become determined at the moment or during the commitment of crime just as any other human behaviour or other phenomena. In other words, the crime is the result of objective and subjective causes. For those who accept this thesis, the *reevaluation of criminal responsibility* becomes reasonable and actual. In this way, there is a need for increased valuation of objective relations besides individual responsibility, but of course, without the injury of individual responsibility. Crime is a product of the individuum of persons, but it is at the same time the product of social relations. It seems to be justified to expand the measures taken after the process of

responsibility to the environment of the offender, to the community, to the small group in which he lives and also to those social relations which surround the offender. In another word, *the organs of criminal justice must have a more close contact with other governmental organs and social establishments.* Today this is of course only demand which hardly comes into effect, but if we increase the possibility of its realisation then it can have a significant influence on the prevention of crime.

In connection with the re-valuation of responsibility we have to refer to those incorrect views which are quite widespread even today and according to which there are offenders and honest people. We must take every opportunity for expressing that people do not differ such way from each other. This is not only so because of unrecorded crime, but also because of the various forms of deviant behaviours which appear by the millions; and which are often more dangerous for society, and are farther from real humanism, than a significant number of smaller crimes. And this is even more characteristic of person who manifests different kinds of behaviour, who shows antagonistic behaviours which may be useful or harmful for the society. *Although in most cases it is justified to categorise acts as good or bad, moral or criminal and its various degrees but we must be careful about a similar categorisation of people, since those characteristics — can be found together though to a different degree — in a single individual.*

Nowadays, in a period when many experts consider the ideology of treatment to be a failure, I feel it is important to fight for the necessity of looking after offenders and of taking care of them. We consider them as suitable variations of treatment. In another word, we cannot push aside the treatment in general because of the misuse of medical-psychological treatment, and of the failure of superficial mental massage. On the contrary, we must look for such means with which offenders can be resocialised or socialised. I propose to place into the foreground the three basic forms of treatment where it seems to be necessary:

1. providing job, perhaps special knowledge which accompanies skill,
2. the consistent educational valuation of production, behaviour and thinking,
3. the maintenance, the strengthening or the creation of proper social relations.

The president, Marc Ancel, has rightly said in one of his studies the following idea: "Since Beccaria the entire development of criminal law consisted of that it provided an ever growing field for the educational concept, which was unknown, or misunderstood the day before." (M.A.: Peine et reeducation dans l'évolution du droit nepal. Ministre de la Justice. Etudes et Documentation. 1959.) Nowadays we express this thought in the following way: there is a need for criminal responsibility which has a preventive aim and an educational content. One of the great result of the present Hungarian Criminal Code it is applies partly the thought of education — in the responsibility for adults as well, which is used for more

than half a century for juveniles. Another important result of the Criminal Code is that it has broken to a certain extent with the punishment system which is based on the proportion of damage or harm caused by the crime and it has increased the possibility of individualisation. For instance, the daily fine punishment or the introduction of a relatively indetermined custody.

I agree with the thought of depenalisation and criminalisation which is expressed in the project programme.

To push into the background the confinement in a required degree is an important necessity. Today in many countries this proper principle of criminal policy does not come into effect, or at least only to an insufficient degree, as regards responsibility. This is the case for instance in Hungary. But it seems, as a regularity that for a certain percentage of offenders, the isolation, the use of international education are unavoidable, in another words, the confinement cannot be abolished. Due to this it is a very important task to work out effective criminal educational methods for these convicts and to use them more widely.

As regards *decriminalisation*, that means, to use other kinds of responsibility according to the administrative, labour and civil law I agree with this principle, but I also propose a thorough meditation over the applying of the practical measures. Taking into consideration Hungarian experiences I feel that we can only use decriminalisation if the conditions for it are given. I share the view that in most cases the administrative, civil and labour law responsibility *can* be more effective than the criminal one. This possibility, however, can only come into effect, if these newly applied forms of responsibility according to their own specific features can work efficiently. We have facts about the effectiveless of these forms of responsibility and we know that a significant percentage of those phenomena which would really belong to these forms avoid the process of responsibility. In other words, the aim we set up for ourselves originally turns on its wrong side, and this situation reacts against crime prevention. It is evident that *the increase of the above mentioned different forms of responsibility which are of low level at present is an indispensable means of crime prevention*. This is why I suggest that *there should be a reference in the programme to the importance and increase of the effect of these different forms of responsibility*. This is one of the basic areas where an increased protection of society can be guaranteed with the disregard of the means of criminal law.

Another very important factor in the prevention of crime is to *involve more number of people in the participation of the fight against crime*. Today it is already a generally accepted principle that crime is the duty not only of the criminal organs, but also that of the entire society. If we accept this view, then we must make efforts to try to put this principle into effect. I feel that it would mean a step ahead to increase the number of volunteer policemen or to establish such an institution where it does not exist. But I attach similar importance to the organisation of social judges for certain criminal case. The congress of the UNO in 1970 in Tokyo had put this

question on its agenda, and this item had been also discussed during the meeting of the ministers of justice of the socialist countries in 1980 in Ulanbator.

If we ask more and more number of people to participate in the fight against crime it will increase the democracy of the criminal responsibility it will help to increase the realisation of the moral views of the inhabitants and the workers in it, and at the same time it will create a wider opportunity for the streaming to the conscience of the professional thinking based to a greater extent on the results of the science.

The increased participation of the society in the fight against crime is such an important means of the prevention of crime in my view, that *it should be advisable to include it in the programme of the Society.* I am convinced that this is also one *unavoidable* way of effective crime prevention.

A final comment as regards the project programme, I agree that it is necessary to express that thought of new categories of recent crimes which comes up with the development of society, with the humanisation and socialisation of thinking, with the change of the content of values and justice. In this way the irresponsible or exploiting economy, financial fraud, causing loss to the consumers and customers, the pollution of the environment, etc. are all such forms of behaviour against which, in certain cases, the criminal responsibility can only be effective with a significant amount of malum. These above mentioned behaviours with certain alterations, can already be found in the criminal codes of the socialist countries, and we consider it our task to go on examining these types of crime, so that the criminal responsibility in these cases can become more effective than the present one.

Finally, I would like to mention, that the principles and the methods of criminal policy which figures in the project programme and besides this, cannot become by themselves the basis of the criminal policy of the different countries. It seems that we must fight for years to come for the acceptance of the principles of social defence. But we must continue to fight also — and this is harder fight — to achieve that the already accepted views of criminal policy become an organic part of social policy, and they would function in the different spheres of the society (economic, cultural, educational, medical, etc.) taking into consideration the interests of crime prevention as well. For the criminal sciences, in order to enforce their own conceptions it is necessary to formulate their theoretical thesis on two levels. One of the levels is the so-called pure theory the expression of regularities regardless whether the consequences of them come into effect in the near future or not. Such theoretical thesis provide perspectives and serve as guiding lines for the activity. The other level is the formulation of those thesis which can come into effect today or in the near future, which exist already or the conditions for which can be provided. The two levels necessarily differ from each other in many respect, but this differentiation promote the development of crime prevention.

DIE AUFGABE DES GESELLSCHAFTSCHUTZES UND DIE KRIMINALPOLITIK

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Der Gesellschaftschutz ist eine kriminalpolitische Bewegung. Ihre Laufbahn begann vor 30 Jahren unter dem Vorsitz von Marc Ancel. . . Die Nachfolger der Bewegung gründeten die Internationale Gesellschaftsorganisation. Die Gesellschaft, die sich bemühte, die vor 30 Jahren angenommenen Zielsetzungen des „Minimalen Programms“ zu verwirklichen, hält zurzeit dieses Programm für ungenügend. Die Hauptzielsetzung des „Minimalen Programms“ ist die Schaffung der humanisierten Strafjustiz. Die heutigen fortschrittlichen kriminalpolitischen Ansprüche übersteigen diese Zielsetzung, und konzentrieren neben der humanen Strafjustiz auf die Vorbeugung der Kriminalität, sowie die Veränderung der kriminogenen gesellschaftlichen Verhältnisse und deren Reform.

Der Artikel macht in diesem Rahmen Vorschläge zur Steigerung des Kampfes gegen die die Kriminalfälle verursachenden Faktoren und schlägt dessen Abfassung als Programmpunkt vor.

Der Artikel setzt fest, daß die Staatsbürger auf die allgemeine Sicherheit, die Existenzbedingungen, ohne Angst vor den Kriminalfällen leben zu können, recht haben. . . Deshalb gelten das Niveau, die Struktur, die Dynamik der Kriminalität auf die Dauer als Maßstäbe der Qualität der Gesellschaft, der Regierungstätigkeit.

Im Bereich der Strafjustiz schlägt der Artikel die Umwertung der Verantwortlichmachung vor, und die Feststellung der Verantwortung der gesellschaftlichen, staatlichen Organe und der verschiedenen Gemeinschaften.

Letztlich schlägt der Artikel vor, daß die Anwendung von pädagogischen Methoden im Interesse der Verwirklichung der preventiven Zielsetzung als immanenter Bestandteil der Strafjustiz und Resozialisierung betrachtet werden soll.

ЗАДАЧИ ОХРАНЫ ОБЩЕСТВА И КРИМИНАЛПОЛИТИКА

Профессор д-р ЙОЖЕФ ВИГ

Охрана общества это криминалполитическое движение. Оно началось 30 лет назад под руководством Марка Анселя. Из сторонников движения образовалась Международная общественная организация, трудившаяся над осуществлением целей, сформулированных в принятой 30 лет назад «Программе-минимуме», которая в настоящее время считается уже неудовлетворительной. Главная цель Программы — минимума заключается в создании гуманного уголовного правосудия. Требования современной криминалполитики превышают эту цель, и кроме гуманного уголовного правосудия особое внимание уделяют предупреждению преступности и — в связи с этим — изменению и реформе криминальных общественных отношений.

В этом отношении автор вносит предложения по усилению борьбы с общественной несправедливостью как фактором преступности, и по включению этого в программу в качестве нового пункта.

В работе фиксируется право граждан на общественную безопасность, на жизнь без опасения преступности. Поэтому уровень, структура и динамика преступности в долгой перспективе являются мерой качества общества, деятельности правительства.

В области уголовного правосудия автор предлагает пересмотреть возможность привлечения к ответственности, а также наряду с индивидуальной установить и ответственность общественных, государственных органов и разных коллективов.

Наконец в работе предлагается в целях превенции включить педагогические методы в качестве органической части в уголовное правосудие и процесс ресоциализации.